IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.1024 OF 2001

Barku Bhavrao Bhaskar,
Age: 45 years, r/o Kakane,
Tal. Kalwan, Dist: Nashik. .... Appellant

- Versus -

The State of Maharashtra .... Respondent

Shri D.G. Khamkar, Advocate (appointed) for the Appellant/Accused.

Shri A.M. Shringarpure, Addl. Public Prosecutor, for the Respondent.

CORAM: N.V. Dabholkar &
Smt.V.K. Tahilramani, JJ.

Reserved on : 07 February, 2006
Pronounced on: 10 February, 2006

JUDGMENT (Per N.V.Dabholkar, J.):

1. The Judgment dated 13-8-2001 delivered by 3rd Addl. Sessions Judge, Nashik in Sessions Case No.49 of 2001, by which the present appellant is held guilty for offences punishable under Sections 364, 302 and 201 of the Indian Penal Code (IPC) is being challenged by the original accused, by this appeal under Section 374(2) of the Code of Criminal Procedure, 1973. The appellant/accused is held guilty by the trial Court for kidnapping child Rekha @ Rakhi, daughter of Jibhau Chavan, aged about 6 years, committing her murder and trying to screen himself by concealing the dead body and

other things. He is sentenced to RI for 5 years, life imprisonment and RI for 3 years on the respective counts. The trial Court was pleased to impose fine and pass default sentence also on all three counts, although of different quantum.

2. The prosecution story, as can be gathered from the deposition of complainant Jibhau Chavan (PW-1 and father of the victim) as also depositions of PW-3 Ranjana Chavan, mother of the victim and couple of brothers of complainant Jibhau, PW-5 Raghunath Chavan and PW-8 Jagannath Chavan, can be briefly narrated as follows:

Complainant Jibhau, his wife Ranjana and couple of daughters Poornima and Rekha @ Rakhi were the family members. The complainant used to undertake masonry work. The accused before the Court is distantly related to the complainant. He was working as a labourer, along with the complainant, some days prior to the alleged incident. On the date of the incident, the accused did not resume his work with the complainant. When the complainant returned home, one boy named Vasant informed him that his daughter Rakhi was missing. On enquiries with wife, upon reaching the residence, the complainant was informed that Rakhi was missing since about 11:30 a.m.. Because couple of days prior to the incident, the accused had suggested that he would take Rakhi to

village Kakane to meet grand-mother, the complainant enquired the whereabouts of the accused. Wife informed the complainant that the accused had visited their place at about 10:30 a.m. and he had also provided sugarcane to child Rakhi and the child enjoyed the same by sitting in the lap of the accused. The complainant, therefore, felt that the accused might have taken Rakhi to village Kakane to the house of her grand-mother. Neighbour Manohar Shinde took the responsibility, he accordingly visited village Kakane and on return, Manohar and Rajendra informed that the accused was not found at the place of grand-mother of missing child Rakhi.

At about 6:30 p.m., the complainant along with one Dashrath Kashinath went to village Kakane. The accused and his mother were present in the house. Upon enquiries about missing child Rakhi, the accused was evasive. Hence the complainant returned home. It is claim of the complainant that on way return, a girl (child) Mohna informed him to have seen Rakhi going along with the accused. When this information was divulged by the complainant to his brother (PW-5 Raghunath), brother directed the complainant to go to Kakane again and bring the accused. The complainant along with one Balu (PW-4 Balvant) again went to village Kakane and brought the accused to his residence at Kalwan.

At this juncture, the accused is said to have made extra-judicial confession on an assurance that he will not be beaten by the family of the victim. The accused informed that about a fortnight ago, at village Bej, the complainant had abused him on account of some dispute regarding payment, he had grudge in his mind. Hence he took Rakhi to Patvihir area near the mountain and he killed her there. He also told that he had hidden the dead body under the stones. The witnesses took the accused to police station where the complainant recorded his complaint (Exhibit-11). Thereafter, the complainant, 7-8 other persons and policemen along with the accused went to Patvihir area by a police jeep and the accused is said to have shown the spot of incident. After removing the stones, dead body of Rakhi was recovered. Rakhi had sustained bleeding injuries to her head and ear and she was wearing her school uniform at that time.

After investigation into the matter by recording appropriate panchnamas, statements of the witnesses, forwarding the seized articles to Forensic Science Laboratory and obtaining reports of analysis, chargesheet was filed in the Court of the J.M.F.C., Kalwan by investigating officer Shantaram Valvi (PW-9). The trial before the Sessions Court ended in conviction,

as narrated above.

3. The prosecution has relied upon the evidence of as many as 9 witnesses. This includes the complainant Jibhau (PW-1), his brother Raghunath (PW-5) and motorcycle rider Balvant (PW-4), a resident of the same locality. All of them claim to have heard the extra-judicial confession made by the accused. In addition, the complainant deposes about the discovery of the dead body at the instance of the accused.

The evidence of PW-3 Ranjana (mother of the victim) and that of PW-7 Rajendra Aher, a petty vendor of toffees, is evidence pertaining to "last seen together". According to Ranjana, the accused had come to her residence at about 10:30 a.m.. He fed sugarcane to the child Rakhi. Ranjana was busy in washing clothes, etc., and when she completed her work, she found that the accused and Rakhi were not in the house. PW-7 Rajendra claims that at about 1:15 p.m. the accused had purchased toffee worth one rupee from his shop and at that time victim Rakhi was with the accused.

PW-8 Jagannath, other brother of the complainant, is examined on the point of quarrel between the accused and the complainant on the point of dues of labour charges. His evidence reveals that the

complainant claimed some amount to be due from the accused because inspite of taking money, the accused was not attending the duties. PW-2 Shantaram Kumawat is a panch witness and he has witnessed discovery of the blood stained shirt of the accused, at the instance of information given by the accused under the memorandum and the panchnama (Exhibits-16 and 17). The shirt is said to have been discovered at a location on Khedgaon road, two furlongs away from village Nakode, it was kept hidden under a stone. API Shantaram Valvi (PW-9) had recorded the complaint of Jibhau (Exhibit-11) and he has also carried out investigation into the matter.

4. The defence of the accused is of total denial. Almost all the questions, during his statement under Section 313 of the Cr.P.C., are replied by stock answers "It is false" or "I do not know". The accused claimed that he is having some agricultural land which he is not ready to give to his nephew i.e. the complainant Jibhau and hence he has been implicated in a false case. The accused thus admits relationship with the complainant. He has also claimed that his thumb impression was taken on a blank paper, when he was questioned about the discovery of his blood stained shirt at the instance of the information given by him. Although he expressed his intention to examine Ashok as his defence witness, subsequently a pursis is filed at Exhibit-30 that he

does not wish to lead any defence evidence.

5. On reference to para 45 of the Judgment, it can be seen that for the reasons discussed, the trial Judge arrived at the conclusion that, in this case wherein there is no direct evidence, the prosecution has established the guilt of the accused beyond reasonable doubts by firm proof of five circumstances as follows:

(i) Rakhi being last seen in the company of the accused.

(ii) Extra-judicial confession of the accused.

(iii) Discovery of the blood stained shirt at the instance of the accused which bears blood stains of the same group as that of the deceased.

(iv) Discovery of the dead body at the instance of the accused.

(v) Motive.

By relying upon the post-mortem notes together with the deposition of the Medical Officer and the inquest panchnama, the learned Judge arrived at the conclusion that death is proved to be homicidal. It is

observed in paragraph 20 that, homicide is not disputed by the accused also, because it was suggested to the Medical Officer that someone else might have committed the murder of Rakhi.

The evidence of Ranjana (PW-3) and Rajendra (PW-7) is believed to hold that victim Rakhi was last seen together with the accused and the accused has not offered any explanation as to when did he part with the company of the child. The evidence of the complainant Jibhau and his brother Jagannath is accepted as proof of motive, since they have narrated story of complainant having abused the accused for not having worked inspite of taking the payment. The evidence of extra-judicial confession, as rendered by the complainant, PW-4 Balvant and PW-5 Raghunath is found worthy of belief by the trial Court because, in the opinion of the trial Court, the discovery of dead body at the instance of the said extra-judicial confession and lead by the accused lends assurance of truthfulness to the confession. The discovery of the blood stained shirt, supported by the report of analysis, is also relied upon as a corroborative piece of evidence.

6. Heard Advocate Shri D.G. Khamkar for the appellant and Shri A.M. Shringarpure, A.P.P., for the respondent.

The case being based on circumstantial evidence, learned Advocate Shri Khamkar for the appellant has reminded us of the guidelines laid down by the Supreme Court in the matters based on circumstantial evidence and the nature and the standard of proof expected of the prosecution in such cases. It is settled legal position that, in the matters based on circumstantial evidence, the prosecution is required to firmly establish each and every circumstance by cogent evidence. All the circumstances together should form a complete chain between the crime and the culprit, leaving no other hypothesis possible except that of the guilt of the accused.

Realising that the case is based on circumstantial evidence and the trial Court, as observed in Judgment paragraph 45, held that the five circumstances are firmly established with cogent evidence which link the accused to the guilt, learned Advocate for the appellant has assailed the said observation by submitting that none of those circumstances are established beyond reasonable doubt. He thus pleaded that the accused is certainly entitled to benefit of doubt. We shall deal with the challenge to the findings with each and every circumstances established while dealing with the reasons for our conclusions, instead of reproducing the arguments here

itself.

7. The learned Advocate for the appellant has desired us to draw an adverse inference against the prosecution for non-examination of certain individuals who are referred in the evidence of the witnesses already examined. One Ashok Bhaskar is referred by PW-7 Rajendra Aher. Rajendra is a witness on the point of the victim being last seen together in the company of the accused. According to Rajendra, Ashok had approached him for search of Rakhi at about 8:30 p.m. on the same day and upon enquiry he had informed Ashok that the accused and Rakhi had come to his shop to purchase sweets. No doubt, the prosecution has not examined Ashok to supplement the evidence of Rajendra. In his statement under Section 313 of the Cr.P.C. the accused expressed his desire to examine Ashok as a defence witness (Question No.11). However, subsequently by pursis (Exhibit-30), the defence side took a decision not to examine Ashok. We feel that if at all any adverse inference could have been drawn due to non-examination of Ashok by the prosecution, inspite of reference to him by PW-7 Rajendra, same stands nullified by this withdrawal of the defence from its decision to examine Ashok as a defence witness. Once Rajendra is examined, we find it needless to draw any adverse inference merely because Ashok was not examined. After

all, Ashok could have, at the most, supported the evidence of Rajendra to the extent of narration of Rajendra when Ashok had approached him in search of the missing child. When the main witness is examined by the prosecution and offered for cross-examination, no adverse inference need be drawn merely because the supporting witness is not examined.

In the evidence of PW-1 Jibhau, there is reference to Manohar Shinde and Rajendra Thakre. According to the complainant, when he was about to start for village Kakane in order to find out whether the accused had taken the child to his place, Manohar volunteered and Manohar and Rajendra Thakre accordingly went to the place of the accused. They returned informing that the accused was not available at home. This was prior to 6:30 p.m.. We are unable appreciate as to why any adverse inference need be drawn against the prosecution for non-examination of witnesses who could not have thrown any light on the matter in question.

Dashrath Kashinath is said to be the driver of the motorcycle by which the complainant went to the place of the accused and returned without the accused when the accused was evasive inspite of enquiries. The prosecution has not examined Dashrath. But Dashrath was

not going to render any other evidence than the fact deposed to, by the complainant. Non-examination of Dashrath is aimed only at avoiding duplication and calls for no adverse inference.

The complainant has also referred that, when he returned home after unsuccessful enquiry with the accused, a child (girl) name Mohna informed him of having seen Rakhi with the accused. This Mohna was brought to be examined as a witness and reasons for failure to record her evidence are recorded by the learned Judge in paragraph 29 of the Judgment. It was evident that Mohna was not 9 years but was probably 6 years old, of the same age group as Rakhi and she did not open her mouth in the Court. Consequently, her evidence could not be recorded. The learned Advocate has gone to the extent of submitting that this is an attempt on the part of the prosecution to create false evidence. We are unable to agree with such an extreme inference and allowance must be made for a child of the age 5-6 years. It may speak freely in the domestic atmosphere and at the same time it may remain dumb-folded in the Court of law, being overawed by the atmosphere. By non-examination of Mohna, the prosecution has lost one more witness on the point of last seen together. We are unable to agree with the Advocate that the same was an attempt to create false

evidence. If that was so, the prosecution would not have tried to examine her by presenting Mohna before the Court. The complainant could have remained satisfied by saying that his wife informed about Rakhi and the accused missing since she returned after washing the clothes. Non-reference to Mohna could not have caused any subtraction from the merits of the prosecution case. Taking these aspects into account, we are not inclined to draw any adverse inference because the prosecution did not examine Mohna.

8. So far as death of Rakhi being homicidal, as rightly observed by the learned trial Judge in paragraphs 14 to 19, there is no much challenge. By relying upon the post-mortem notes (Exhibit-22), supported by the inquest panchnama (Exhibit-8) which was admitted in evidence because of no objection on the part of the defence and by taking into consideration the nature of the injuries as precisely described by the Medical Officer Dr. Priyanka (PW-6), there need remain no doubt about the death being homicidal. We may only refer to internal damage suffered by the victim instead of referring to five surface injuries, described in column No.17 of the post-mortem notes. From column No.18, it is evident there was fracture of mandible in the central part. Column No.19, which describes the internal injuries, shows haematoma on the left side under the scalp,

fracture of coronal suture line extending towards temporal and parietal parts on both the sides. There was also meningeal tear of temporal region right side and on parietal region left side. It is evident from the description of the injuries that head of the child victim was the main target for the assailant. Dr. Priyanka has recorded that death ensued due to shock due to cardio-respiratory arrest due to head injury.

We do not find any hesitation to record a finding that the trial Court was justified in holding the death to be homicidal, especially in the absence of any serious challenge on the part of the defence.

9. Now we proceed to consider the challenge posed by the learned Advocate for the appellant to the circumstances relied upon by the prosecution and held proved by the trial Court, one by one.

Referring to the discussions by the learned trial Judge in paragraphs 39 to 42 of the Judgment, learned Advocate for the appellant pointed out that although the prosecution claims that the shirt allegedly worn by the accused at the time of commission of the offence was discovered at his instance (memorandum and panchnama - Exhibits 16 and 17 respectively) and although the reports of the chemical analyser

(Exhibit-14) indicate that the victim was individual of blood group "A" and the shirt discovered at the instance of the accused was also stained with human blood of group "A", thereby suggesting the possibility that shirt of the accused is stained with the blood of the victim, the circumstance is not conclusively proved. This is because the blood group of the accused does not appear to have been determined. No doubt, the report of the analysis produced on record does not indicate that sample of the blood of the accused was sent for determination of group. In fact, sample of the blood of the deceased was also not sent and blood group of the deceased is determined on the basis of blood group of the stains on the clothes of the deceased. However, as rightly pointed out by the learned A.P.P. Shri Shringarpure, a reference to panchnama regarding the arrest of the accused rules out doubts, if any, and suggested possibility of blood stains on the shirt of the accused being of his own, in the absence of determination of his blood group. On reference to panchnama (Exhibit-7) regarding arrest, it is evident that the accused was examined by removing his clothes and there were no marks of violence on his person much less any bleeding injury. The arrest was technically effected on 4-12-2000 at 01:15 hours i.e. immediately after midnight between 3rd and 4th of December, 2000. We feel that absence of any injury on the person of the

accused is sufficient to rule out any possibility that stains of blood on the shirt of the accused could be of his own blood.

Once the prosecution has brought on record that the victim is an individual with blood group "A" and that the shirt seized at the instance of the accused was stained with human blood of the same group, it was for the accused to explain this. Except saying "It is false", the accused has not offered any explanation to this situation in response to question Nos.33 to 35.

We, therefore, feel that the trial Court committed no error in holding that the prosecution has established, by cogent evidence, the fact of shirt of the accused having stains of human blood and of the same group as that of the deceased, which situation is capable of leading to strong inference that the accused was the assailant.

10. **Last seen together:** PW-3 Ranjana (wife of the complainant and mother of the victim) as also PW-7 Rajendra Aher are the witnesses who claim to have seen the victim in company of the accused, whereafter the child Rakhi was not seen alive by anybody. According to the mother, the accused had come to her residence on the date of the incident at about 10:30 a.m.. He had

brought some sugarcane for the child. It is not in dispute that the accused was not only a labourer working under the complainant Jibhau but he is related to complainant Jibhau. The accused himself has referred Jibhau as his nephew. According to the complainant, the accused had even proposed to take the child to meet his mother at Kakane, because his mother happens to be the grand-mother of the child. According to Ranjana, when the child was eating sugarcane sitting in the lap of the accused, she engaged herself in the domestic work and by the time she returned after washing the clothes, she found that the accused and Rakhi were not in the house. The reasons for search not being on war-footing stand explained by the fact that the accused was a relative of the complainant, regular visitor and he had already proposed to take the child to meet his mother. The search assumed serious dimensions with the passage of time.

PW-7 Rajendra Aher is a petty dealer. He does some ironing work and at the same time he also sells toffees and sweets. According to Rajendra, the accused accompanied by the child had come to his shop on 3-12-2000 at about 1:00 p.m.. They had departed after the accused purchased sweets worth one rupee for the child. Having gone through the cross-examination of Rajendra, the defence does not appear to have been able

to point out anything that will make him an unreliable witness. No doubt, he does not possess any licence under the Shops and Establishment Act. It may be taken note that he is a very petty vendor in a very small township. Even during cross-examination of Ranjana, there is no substance except all denied suggestion.

This evidence of "last seen together" is desired by the learned Advocate for the appellant to be disbelieved by this Court because there is a large time gap between these two witnesses having seen the victim in company with the accused and the time of recovery of dead body at about midnight hours. No doubt, last seen together is a very strong circumstance that suggests the accused-companion being the killer of the victim by inference. Ordinarily, this last seen together evidence ought to be pertaining to a point of time as close as possible to the time of death but not to the time of discovery of the dead body. There may be cases wherein the accused persons may be in a position to keep the dead body concealed for a longer period or even if not concealed, the dead body may be found by others and police after a considerable time gap since the death. The evidence regarding last seen together must be nearest to the time of death and need not necessarily be nearest to the time of discovery.

Two witnesses have seen the victim at about 10:30 a.m. and 1:00 p.m. respectively, in company of the accused. The dead body is recovered at about midnight. There is reason to believe that child might have been killed some time earlier. The time gap of about 5-6 hours (from 1:00 p.m.) between death and last seen together is not such a large time gap that the witnesses can be looked with disbelief. We are inclined to go a step further. Even a large time gap between the point of time of last seen together and the time of death may not be fatal in each and every case. For example, if assailant departs with victim from place 'A' by informing that victim is being taken to a distant place for a tour and returns alone, in this case, there may be a large time gap between last seen together and the death. Length of time gap, however, would not be detrimental to prosecution merits. Even the smallest time gap may not serve the purpose of the prosecution, if there is somebody who had seen the victim alive subsequent to the point of time of last seen together and without being in company with the accused or suspect. In the matter on hands, there is no such suggestion that the victim was seen alive by anybody after having parted company with the accused and, therefore, time gap of about 6 hours and may be possibly even 10-12 hours between last seen together and the death (not the discovery) is not capable of affecting

the merits of the evidence of Ranjana and Rajendra. Minimum time gap between last seen and the death gives credibility to the evidence of the witnesses who claim to have last seen the victim and the accused together. Time gap between last seen and discovery of dead body is immaterial. By larger time gap between last seen and death also the evidence of witnesses need not be discarded in the light of the illustration quoted hereinabove and the evidence of last seen together can be worthless, only if, defence creates a probability of somebody having seen the victim alive, after the point of time about which the witnesses speak of last seen together. In the matter at hands, there is no such probability created by the defence. In the circumstances, the evidence of Ranjana and Rajendra, at least, rolls the ball into the court of the accused and it was necessary for him to explain as to when did he part the company of the victim. On reference to answers to question Nos.7, 8 and 13 during the statement under Section 313 of the Cr.P.C., the accused does not seem to have utilised the opportunity for offering any plausible explanation. We are, therefore, not inclined to accept the submission of the learned Advocate for the appellant that evidence of Ranjana and Rajendra, on the point of last seen together, is worthless any utility.

11. The evidence of discovery is challenged because the

investigating agency has not done usual documentation of the events. Neither a memorandum of the statement of the accused is recorded nor a panchnama regarding the manner in which the accused led the police party to the location of the dead body is reduced to writing. Two witnesses have deposed about the discovery of dead body at the instance of information given by the accused i.e. the complainant and API Shantaram Valvi. Both of them claim that after recording of complaint (Exhibit-11), police party along with 7-8 others and the accused proceeded by police jeep where the spot and the dead body, covered by stones, was pointed out by the accused. Cross-examination of both these witnesses is not such a successful cross-examination that these witnesses can be said to be telling lies on the aspect of discovery. On reference to Section 27 of the Indian Evidence Act which makes the statements of the accused persons, even if confessional and whilst in police custody to a police officer, admissible in evidence because of confirmation of truthfulness of the information by the discovery i.e. doctrine of confirmation by subsequent events. Section 27 does not lay down any procedure regarding the manner in which the statement made by the accused person to the police officer should be recorded or that the proceedings of the discovery and the manner in which the accused led the police party to the location where the concealed article is discovered should be reduced to

writing. Writings regarding the events those take place during the course of investigation, which are commonly termed as "panchnamas" is a matter of convention. The convention is established as a result of necessity. A police officer may investigate more than one cases at each station not only during his entire tenure but even during a single day. He is expected to render an accurate account of such events when the matter enters trial and he is required to step into the witness box. These writings titled as "Memoranda or Panchnamas" serve the purpose of enabling the police officers or to that extent all witnesses who participate in the investigation; to refresh their memory by referring to the contents of the writing, which are reduced to writing when the things are fresh in the memory, either of the investigating officer or the person who is summoned to witness the event. Thus, merely because a formal memorandum of the statement of accused is not reduced to writing or because a panchnama of the discovery is not reduced to writing, that by itself will not be sufficient to discredit or disbelieve the investigating officer and the father of the victim.

Before accepting any allegation of false implication, it must be remembered that the complainant and the accused are related as nephew and uncle. The complainant is most unlikely to allow the real culprit

to go scot-free by false implication of his uncle for the purpose of recovery of petty amount.

In the matter at hands, there is explanation available on record as to why the search for the missing child, must not have been vigorous, at the initial stages. The parents of the child, initially believed a possibility of accused having taken the child to meet his mother (grand mother of the child). This hope was lost only by about 6.30 p.m., when the complainant visited the accused at village Kakane with Dashrath. The defence has not brought it on record, even by suggestion to any of the witnesses, that the villagers were sent in search of the child all over the area, surrounding the village of the complainant and thus, the defence is not in a position to create a possibility on record that the dead body might have been discovered by any of the search parties. In such circumstances, it is difficult to disbelieve the version of the complainant Jibhau and Investigating officer Shantaram that, the accused guided the police and villagers to the place of occurrence and the dead body, hidden under stones, was discovered at his instance. The panchanama of scene of occurrence is at Exh. 6 and the inquest at Exh.8. Both seem to have been drawn at the location and the description of the location is available in both these panchanamas. The same is within the precincts of

village **Pat Vihir** at the foot of mountain called **'Munja Dongar'**. Even in the inquest, there is description of dead body having been covered by some large and some small stones, so also 2-3 branches of babool tree. The child aged 6 years was resident of Kalwan and the dead body is found in the precints of village Pat Vihir. It is impossible to imagine that the child aged six years would walk away such a long distance. The discovery at the instance of accused, in the light of unimpeached depositions of complainant and Investigating Officer, together with surrounding circumstances discussed hereinabove, is, therefore, required to be believed.

12. Shri Khamkar, learned Advocate for the appellant, has placed reliance upon the reported judgment of the Hon'ble Apex Court, in the matter of **Arjun Marik v. State of Bihar,** 1994 S.C.C. (Cri.) **1551**, and more particularly head notes G and H, which are reproduction of some of the observations in paragraphs 10 and 13 respectively, of the reported judgment. Head note H reads;

> "**The only circumstance** of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore,

> no conviction on that basis **alone** can be founded."

In the matter at hands, the victim last seen together with the accused, is not **the only circumstance**, relied upon by the prosecution. We are taking into consideration cumulative effect of all the circumstances relied upon by the prosecution, including evidence of couple of witnesses on the point of victim having been last seen together with the accused. The ratio relied upon by the learned Counsel is, therefore, inapplicable.

Head Note G of the reported judgment is pertaining to importance of **'motive'** in the cases based on circumstantial evidence. We are of a considered view that, the observations from paragraph 10 relied upon by the learned Counsel for the appellant, are not fully in favour of the defence, as felt by him. We quote;

> "**Mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established**. But in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance

> if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime, then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused."

It is evident from the aforesaid observations that in the cases based on circumstantial evidence, motive can provide one of the links in the chain of circumstances. But absence of motive would not cause failure of the prosecution, if involvement of the accused in the crime can otherwise be established.

13. So far as motive is concerned, the prosecution has relied upon the motive, as reflected in the extra-judicial confession of the accused, as deposed to by PW Nos.1 Jibhau, 4-Balwant and 5-Raghunath. All these witnesses claimed the accused to have informed that he was grinding an axe in his mind against the complainant, because the complainant had abused him at

village Bej, during dispute relating to payment. Advocate Shri Khamkar for the appellant urged that, although evidence regarding this dispute has come on record in the deposition of complainant Jibhau and his brother Jagannath-PW 8, they are discrepant and complainant makes no reference to presence of Jagannath, when he abused the accused on the issue of payment. We intend to reproduce verbatim hereinbelow, the version of two witnesses, to which our attention was drawn by learned Counsel for the purpose of supporting his argument.

PW-1 Jibhau has said;

> "Then, the accused said that about 15 days back at village Bej, I had given him abuses on account of dispute relating to payment. He was having grudge in his mind about it and ....."

PW-8 Jagannath has deposed thus;

> "On 18.11.2000, the accused came to me at about 9 am and requested me to give him some work. I asked him why he was asking me the work, as he was working with my brother Jibhau. He said to me

> that, Jibhau was not having the work and hence, I should give him the work. **At the same time, my brother Jibhau came there and he said to accused that, if he does not want to come to work with him, accused to (should) return his money. Jibhau gave abuses to the accused**."

In the cross examination of either of these witnesses, the defence has not been able to obtain admissions, indicating falsehood on their part. No doubt, as argued by Advocate Shri Khamkar, the complainant has not referred to presence of Jagannath, in his narration. But it must be taken into account that the deposition of complainant is regarding what narration accused made to the complainant and his brothers. It is not an account of the incident, given by the complainant himself. The complainant cannot be disbelieved because of the difference relied upon by the learned counsel for the appellant, because in doing so, we will be disbelieving the complainant because of variance in the versions of Jagannath and accused himself, about the incident during which the accused was abused by the complainant. The deposition of the complainant pertaining to this incident is the account of incident, as given by the accused.

It was suggested to the complainant during the course of his cross-examination that, the accused worked with the complainant for 5-6 years and being relative, without any payment. It is further suggested that, when it was the turn of the complainant to pay money, he has tried to implicate the accused in a false case. ,No doubt, the suggestion is denied by the complainant, but the suggestion clearly indicates that there was some dispute between nephew and uncle (complainant and accused), on the point of payment of labour charges by complainant to the accused and it appears that both of them believed that the amount was due from other.

No doubt, some amount due, appears to be inadequate as motive for murder. But motive, which is internal state of mind, is always in the hidden compartment of the mind of the culprit and hence, it is not possible to perceive the same in each and every case. That is why, although proof of motive on record strengthens the prosecution case, absence of such proof is not sufficient to throw the prosecution case overboard. How much sharp would be the reaction of an individual to any situation, cannot be judged by any safe parameters. In a given case, petty dues may be sufficient motive for a culprit to be violent. In another case, in spite of more serious reasons, some individual may continue to be calm and composed.

We must say that, the prosecution has established on record that the complainant and the accused were grinding axe against each other, because of some dispute on account of payment of charges.

14. **Regarding extra-judicial confession.** It was submitted by Advocate Shri Khamkar that, although as many as three witnesses have spoken about extra-judicial confession made by the accused, the same is inadmissible in evidence, because it was not voluntary, it was because of promise that the accused would not be beaten, it has come on record through evidence of interested witnesses and it was made to a person in authority, since the complainant was a master of the accused who was serving under him, as a labourer. Shri Khamkar has supported his argument, by relying upon couple of judicial pronouncements.

In the matter of **Kishore Chand v. State of H.P., AIR 1990 S.C.2140**, Shri Khamkar has relied upon paragraph 7, which is to following effect:

> "An unambiguous extra-judicial confession possesses a high probative value force as it emanates from the person who committed the crime and is

admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession **the Court has to be satisfied that it is a voluntary one and does not appear to be the result of inducement, threat or promise envisaged under Sec. 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Ss. 25 and 26 of the Evidence Act**. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the Court must scrutinise all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence

> on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. **The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made** and the circumstances in which it came to be made and the actual words used by the accused."
>
> (emphasis added)

In the matter at hands, veracity of the witnesses, i.e. PW Nos. 1,4 and 5, is not in doubt, since the defence has not struck any success in impeaching their character, during cross examination. On the contrary, narration of the witnesses that the accused made statement on the assurance that he will not be beaten, if he discloses entire truth, gives ring of reliability to the version of the witnesses.

By virtue of section 24 of the Evidence Act, confession by accused person is irrelevant, if making of confession is caused by inducement, threat or promise, **having reference to charge against the accused person**, proceeding from from a person in authority and sufficient, in the opinion of the Court, , to give the accused person grounds, which would appear to him

reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature **in reference to the proceedings against him**.

We feel, the clauses underlined hereinabove, which form part and parcel of Section 24 of the Evidence Act, are of vital importance. The threat, inducement or promise, in order to make the confession irrelevant or inadmissible, must flow from a person in authority and the court should be in a position to form an opinion that the accused has made the confession on the supposition that, he would avoid any evil of a temporal nature **in reference to the proceedings against him**. Threat, inducement or promise contemplated by Section 24 has also to be one, relating to the charge against the accused person.

In the matter at hands, promise that he will not be beaten, was made to the accused by the complainant, his colleague Balwant and his brother Raghunath. The extra-judicial confession was made in the absence of police and before taking the accused to the police station. It was not from a person in authority, either relating to the investigation, or trial of the accused. Merely because the accused was serving under the complainant as a labourer, the confession cannot be said to have been made to a person in authority as

contemplated by Sec.24 of the Evidence Act. Section 24, when it refers to 'person in authority', such person in authority must be considered, in the light of clauses underlined hereinabove, for the purpose of emphasis. Even the person in authority must be an authority in reference to the charge that maker of confession was expected to face. The complainant and his brother, in that sense; were not the persons in authority.

Even the threat, inducement and promise are required to be in reference to the charge against the accused. The said promise must compel the accused, to believe that he would gain some advantage, or avoid some evil in reference to the proceedings against him. It is not the case of the defence that the accused was promised, either acquittal or leniency, if he made full and true disclosure. He was only assured by the complainant that he (accused) will not be thrashed, if he makes full and true disclosure. The promise of **'not beating'**, as has come on record, therefore, does not bring the extra-judicial confession within the clutches of Section 24 of Indian Evidence Act.

The observations of the Supreme Court relied upon by Shri Khamkar, learned Counsel for the appellant, enjoins a duty upon the court to ensure against falsehood of the confession. In the matter at hands,

the truthfulness of the confession is guaranteed by discovery of dead body at the location of occurrence, at the instance of information by the accused. For the sake of arguments, even if extra-judicial confession is to be ignored, because it has come to a person in authority and because of promise of not beating, still the statement of accused would go on record under Section 27 of the Indian Evidence Act, as information leading to the discovery of dead body, which the Investigating Officer has failed to record in writing.

In the matter of **State of Maharashtra v. Damu Gopinath Shinde, AIR 2000, S.C. 1691**, accused No. 3 Mukinda, after his arrest, told the Investigating Officer that, Dilip's dead body was carried by him and accused No.2 Guruji, on the motorcycle and thrown in the canal. The lower courts had held this statement of accused No. 3, not admissible in evidence, because the dead body was not recovered pursuant to the said statement. However, accused No. 3 had pointed out the spot and there, the Investigating Officer found a broken piece of glass, lying on the ground, which fitted to the tail-lamp of the motor-cycle recovered from the house of accused No. 2, of which one piece of glass was missing from the tail-lamp. In these circumstances, for the observations recorded in paragraphs 37 to 39, the Hon'ble Apex Court observed that, it can safely be held

that the Investigating Officer discovered the fact that the accused had carried the dead body on that particular motorcycle upto to the spot.

In the matter at hands, as already observed, extra-judicial confession is not hit by the bar of Section 24, but even if it is presumed to be so hit for the sake of argument, in the light of discovery of dead body from the spot, the statement of the accused that he had taken the child to Pat Vihir area near mountain, called ‘Munja Dongar’, is admissible, in spite of promise of not beating, by the complainant and his brother.

15. For the reasons discussed hereinabove, we find no substance in the challenges posed by the learned Counsel for the appellant, to the finding of the trial court that the circumstances enlisted in paragraph 5 ante, are firmly established and the cumulative effect of those, brings the guilt home of the accused. The appeal, therefore, fails.

16. The appeal is dismissed.

The Registrar (Judicial) shall ensure supply of certified copy of this judgment to the appellant-accused Barku Bhavrao Bhaskar, free of costs; through prison

authorities.

Shri D.G. Khamkar, was appointed as Advocate at the cost of the State, to conduct the appeal for the prisoner. We quantify his professional charges at Rs.2500/-.

(Smt. V.K.Tahilramani, J.) **(N.V.Dabholkar, J.)**